

1999P7471US01; 60,426-003

REMARKS

Claims 1-7, 19-20, 24-31, and 34-37 remain in the application including independent claims 1, 19, 25, and 31. Claims 8-18, 21-23, 32-33, and 38 have been cancelled.

In the decision of October 15, 2004, the Board of Patent Appeals and Interferences reversed the rejections of claims 21, 25-27, 29-30, and 38. Claims 19-20 and 28 were indicated as allowable prior to the board decision.

Claim 21 has been incorporated into claim 1, claim 25 has been rewritten in independent form, and claim 38 with the associated intervening dependent claims has been incorporated into claim 31. Thus, applicant asserts that claims 1-7, 19-20, 24-31, and 34-37 are now in condition for allowance and respectfully requests an indication of such.

The examiner argues that the subject amendment is non-responsive under MPEP 1214.06 because Applicant has failed to: "(1) cancel claims 2-7, 24, and 34-37 because the rejection of said claims was affirmed by the Board of Patent Appeals; and (2) amend claim 30 into independent form including the subject matter of claims 1 and 24 from which claim 30 depends."

Appellant strongly disagrees with the examiner's assertion. Claim 21, which was indicated as allowable, has been incorporated into claim 1. Claims 2-7 and 24 now depend from a claim that was indicated as allowable by the Board. Similarly, claim 38, which was indicated as allowable, was incorporated into claim 31 along with intervening claims 32 and 33. Claims 34-37 now depend from a claim that was indicated as allowable by the Board. With regard to claim 30, claim 21 already includes the main feature of claim 30, and as claim 21 is incorporated into claim 1 there is no need to make claim 30 independent.

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Appellant is puzzled by the examiner's refusal to enter the subject amendment. If claims 21, 25-27, 29-30, and 38 had been indicated as allowable by the examiner in a final rejection (prior to submission of a Notice of Appeal) applicant would have made the identical amendment. The examiner would have entered this amendment as a matter of course and issued a Notice of Allowance. The fact that these claims are now allowable in response to a Board decision does not change this well accepted and proper amendment practice. Thus, appellant asserts that the subject amendment is proper and respectfully requests that the examiner enter the amendment.


In the alternative, if the examiner continues to assert that the subject amendment is not compliant with MPEP 1214.06, appellant requests that the examiner refer to MPEP 1214.07. "Sometimes an amendment is filed after the Board's decision which does not carry into effect any recommendation by the Board and which presents a new or amendment claim or claims. . . . If the amendment obviously places an application in condition for allowance, regardless of whether the amendment is filed with an RCE, the primary examiner should recommend that the amendment be admitted." MPEP 1214.07. The subject amendment is not adding any new claims. The subject amendment is simply taking the claims that have been allowed by the Board. This amendment clearly places the application in condition for allowance.

In Appellant's first submission of the Amendment In Response to Board Decision, the Commissioner was authorized to charge Deposit Account No. 50-1482 for the fee for one additional independent claim in the name of Carlson, Gaskey & Olds. If the appellant's deposit account has not already been charged for one additional independent claim, the Commissioner is authorized to charge Deposit Account No. 50-1482 for this fee.

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Appellant believes that no additional fees are required, however, any additional fees or credits may be charged or applied to Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds.

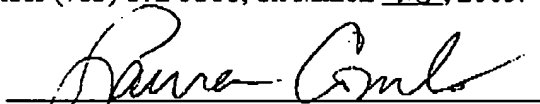
Respectfully submitted,

  
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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States patent and Trademark Office, fax number (703) 872-9306, on March 15, 2005.

  
Laura Combs